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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,091	07/28/2006	John M. Stencel	1284-001	4355
1009	7590	03/18/2009	EXAMINER	
KING & SCHICKLI, PLLC 247 NORTH BROADWAY LEXINGTON, KY 40507				KWOK, HELEN C
ART UNIT		PAPER NUMBER		
2856				
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			03/18/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/588,091	STENCEL, JOHN M.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Helen C. Kwok	2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 21 November 2008.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-23 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-4, 8-16 and 21-23 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 7,153,396 (Genser).

With regards to claims 1-4 and 8-12 Genser discloses a rotating evaporator comprising, as illustrated in Figures 1-3, a plurality of passive sensors 14,15 (i.e. hydrophone) for generating an output signal representative of an acoustic emission associated with a foam M of an object (i.e. liquid F); a controller 60 in communication with the passive sensor for receiving the output signal and providing a response. Furthermore, a signal for activating a source of foam suppressant positioned adjacent the liquid; the response provides a signal for activating an alert (i.e. display device); a precursor material (i.e. a column of liquid F) includes a heater (not illustrated, but disclosed) for heating the precursor material is susceptible to foaming wherein the passive sensors are positioned at/above/below the surface of the liquid F. (See, column 11, line 39 to column 14, line 27).

With regards to claims 13-16, the claims are commensurate in scope with the

above claims and are rejected for the same reasons as set forth above.

With regards to claims 21-23, the claims are commensurate in scope with the above claims and are rejected for the same reason as set forth above.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5-7 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 7,153,396 (Genser) in view of U.S. Patent 6,484,568 (Griffith et al.).

With regards to claim 5, Genser does not explicitly suggest a system for testing a mineral admixture for making concrete. Griffith et al. discloses an apparatus for testing foamed fluids comprising, as illustrated in Figures 1-6, foaming apparatus for making a concrete/cement with the foam and having a vessel 15 for receiving the mineral admixture. (See, column 3, line 32 to column 5, line 28). It would have been well known to an artisan in the art to have readily recognize the advantages and desirability of combining the device with a system for testing a mineral admixture for making concrete/cement as suggested by Griffith et al. to the apparatus of Genser wherein the characteristics of the concrete/cement can be monitored to maintain steady pressure on the foamed fluid so that the transfer process can provide a constant density of the

foamed fluid from sample to sample. (See, column 1, line 48 to column 2, line 8).

With regards to claims 6-7, Griffith et al. further discloses a source of an air entraining agent added to the admixture such that the response includes a signal for activating an agitator. (See, column 3, line 32 to column 5, line 28).

With regards to claim 17-20, the claims are commensurate in scope with claims 5-7 and are rejected for the same reasons as set forth above.

### ***Response to Amendment***

5. Applicant's arguments filed November 21, 2008 have been fully considered but they are not persuasive.

Applicant argues that the reference, Genser, does not teach a passive sensor for generating an output signal representative of an acoustic emission associated with the foam (as in claim 1) or detecting an acoustic emission of the foam (as in claim 13) and that the acoustic sensors (Genser notes a variety of sensors may be used and acoustic sensors are mentioned in the reference) are used to measure acoustic measurements related to vibrations of the rotating container and not of the foam.

The Examiner disagrees and believes the Genser reference does suggest the claimed limitations and features, as presently claimed. In 17, lines 34-44 (which is claim 19), claims the sensors 14,15,16, where sensors 14,15 are the foam sensors, can be acoustic sensors. In column 11, lines 57-61, the foam sensor 15 receives a signal SB that is a direct measure of the foam in the medium M of the rotating container where vibrations of the rotating container are caused by the mass distribution of the mass

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moment of the medium M and the sound vibrations can be measured by acoustic sensors. (See, column 13, lines 14-20). Depending on the signal SB of the foam sensor 15, the control and/or regulating mechanism 60 controls the rotating speed of the rotating container according to the foam detected in the rotating container. (See, column 11, lines 62-67). Furthermore, in column 12, lines 6-16, different types of foam sensors can be used (i.e. infrared sensors, radar sensors, camera and along with acoustic sensors as described in the specification as commented above.).

Applicant further argues that Genser does not teach a signal for activating a source of foam suppressant positioned adjacent the liquid (as in claim 2).

Genser does suggest a control signal SC to activate a source of foam suppressant (i.e. a drive means 6 which control the speed of the rotating container controls the evaporation process of the medium M where the foam MF develops - column 11, lines 15-28) is positioned adjacent the liquid (as observed in Figure 1). Furthermore,

Furthermore, Applicant argues Genser does not teach the sensors are hydrophones and placed in acoustic communication with the foam (as in claims 9 and 14-15).

In column 12, lines 15-27, Genser teaches the sensor can be positioned adjacent or attached at different locations. In column 11, lines 43-45, the foam sensors 14,15 are positioned inside of the rotating container 2 where the foam MF is formed. Although Genser does not explicitly disclose a hydrophone, one of ordinary skills in the art would have recognized the advantages and desirability of employing a hydrophone for an

acoustic sensor since this concept is well known in the technology of acoustic emissions.

Lastly, Applicant argues the references, Genser and Griffith et al., are not combinable and the obviousness rejection fails to provide the necessary support for combining the references to make an obvious rejection (as for claims 5-7 and 17-20).

The Examiner believes the references, Genser and Griffith et al., are combinable and provides the necessary support for combining the references to make the obvious rejection. It should be noted that a reference is to be considered not only for what it expressly states, but for what it would reasonably have suggested to one of ordinary skill in the art. (See, In re DeLisle, 160 USPQ 806 (CCPA 1969)). Furthermore, the Examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination. (See, In re Nomiya, 184 USPQ 607 (CCPA 1975)). However, there is no requirement that a motivation to make the combination be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. (See, In re Simon, 174, USPQ 114 (CCPA 1972)).

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen C. Kwok whose telephone number is (571) 272-2197. The examiner can normally be reached on 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron E. Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Helen C. Kwok/  
Primary Examiner, Art Unit 2856  
March 13, 2009